

CO; whether the contract was sole source or set-aside; whether the protester submitted an offer; whether the protested concern was the apparent successful offeror; when the protested concern submitted its offer (*i.e.*, made the self-representation that it was a SDVO SBC); whether the procurement was conducted using sealed bid or negotiated procedures; the bid opening date, if applicable; when the protest was submitted to the CO; when the protester received notification about the apparent successful offeror, if applicable; and whether a contract has been awarded.

[69 FR 25269, May 5, 2004, as amended at 70 FR 14527, Mar. 23, 2005]

§ 125.26 What are the grounds for filing an SDVO SBC protest?

(a) *Status.* In cases where the protest is based on service-connected disability, permanent and severe disability, or veteran status, the Associate Administrator for Government Contracting will only consider a protest that presents specific allegations supporting the contention that the owner(s) cannot provide documentation from the VA, DoD, or the U.S. National Archives and Records Administration to show that they meet the definition of service-disabled veteran or service disabled veteran with a permanent and severe disability as set forth in § 125.8.

(b) *Ownership and control.* In cases where the protest is based on ownership and control, the Associate Administrator for Government Contracting will consider a protest only if the protester presents credible evidence that the concern is not 51% owned and controlled by one or more service-disabled veterans. In the case of a veteran with a permanent and severe disability, the protester must present credible evidence that the concern is not controlled by the veteran, spouse or permanent caregiver of such veteran.

[70 FR 14527, Mar. 23, 2005]

§ 125.27 How will SBA process an SDVO protest?

(a) *Notice of receipt of protest.* Upon receipt of the protest, SBA will notify the contracting officer and the protester of the date SBA received the

protest and whether SBA will process the protest or dismiss it under paragraph (b) of this section.

(b) *Dismissal of protest.* If SBA determines that the protest is premature, untimely, nonspecific, or is based on non-protestable allegations, SBA will dismiss the protest and will send the contracting officer and the protester a notice of dismissal, citing the reason(s) for the dismissal. The dismissal notice must also advise the protester of his/her right to appeal the dismissal to SBA's Office of Hearings and Appeals (OHA) in accordance with part 134 of this chapter.

(c) *Notice to protested concern.* If SBA determines that the protest is timely, sufficiently specific and is based upon protestable allegations, SBA will:

(1) Notify the protested concern of the protest and of its right to submit information responding to the protest within ten business days from the date of the notice; and

(2) Forward a copy of the protest to the protested concern, with a copy to the contracting officer if one has not already been made available.

(d) *Time period for determination.* SBA will determine the SDVO SBC status of the protested concern within 15 business days after receipt of the protest, or within any extension of that time which the contracting officer may grant SBA. If SBA does not issue its determination within the 15-day period, the contracting officer may award the contract, unless the contracting officer has granted SBA an extension.

(e) *Award of contract.* The CO may award the contract after receipt of a protest if the contracting officer determines in writing that an award must be made to protect the public interest.

(f) *Notification of determination.* SBA will notify the contracting officer, the protester, and the protested concern in writing of its determination.

(g) *Effect of determination.* SBA's determination is effective immediately and is final unless overturned by OHA on appeal. If SBA sustains the protest, and the contract has not yet been awarded, then the protested concern is ineligible for an SDVO SBC contract award. If a contract has already been awarded, and SBA sustains the protest, then the contracting officer cannot

count the award as an award to an SDVO SBC and the concern cannot submit another offer as an SDVO SBC on a future SDVO SBC procurement unless it overcomes the reasons for the protest (e.g., it changes its ownership to satisfy the definition of an SDVO SBC set forth in § 125.8).

[70 FR 14528, Mar. 23, 2005]

§ 125.28 What are the procedures for appealing an SDVO status protest?

The protested concern, the protester, or the contracting officer may file an appeal of an SDVO status protest determination with OHA in accordance with part 134 of this chapter. If the contract has already been awarded and on appeal, the OHA Judge affirms that the SDVO SBC does not meet a status or ownership and control requirement set forth in these regulations, then the procuring agency cannot count the award as an award to a SDVO SBC. In addition, the protested concern cannot self-represent its status for another procurement until it has cured the eligibility issue. If a contract has not yet been awarded and on appeal the OHA Judge affirms that the protested concern does not meet the status or ownership and control requirement set forth in this part, then the protested concern is ineligible for an SDVO SBC contract award.

[70 FR 14528, Mar. 23, 2005]

Subpart E—Penalties and Retention of Records

SOURCE: 69 FR 25270, May 5, 2004, unless otherwise noted.

§ 125.29 What penalties may be imposed under this part?

(a) *Suspension or debarment.* The Agency debarring official may suspend or debar a person or concern pursuant to the procedures set forth in part 145 of this chapter. The contracting agency debarring official may debar or suspend a person or concern under the Federal Acquisition Regulation, 48 CFR Part 9, subpart 9.4.

(b) *Civil penalties.* Persons or concerns are subject to severe civil penalties under the False Claims Act, 31 U.S.C. 3729–3733, and under the Program Fraud

Civil Remedies Act, 331 U.S.C. 3801–3812, and any other applicable laws.

(c) *Criminal penalties.* Persons or concerns are subject to severe criminal penalties for knowingly misrepresenting the SDVO status of a SBC in connection with procurement programs pursuant to section 16 of the Small Business Act, 15 U.S.C. 645, as amended; 18 U.S.C. 1001; and 31 U.S.C. 3729–3733. Persons or concerns also are subject to criminal penalties for knowingly making false statements or misrepresentations to SBA for the purpose of influencing any actions of SBA pursuant to section 16(a) of the Small Business Act, 15 U.S.C. 645(a), as amended, including failure to correct “continuing representations” that are no longer true.

PART 126—HUBZONE PROGRAM

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